

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROY L. BROWN,

Plaintiff,

v.

Case No. 07-11312
Honorable Patrick J. Duggan

LINDA MATUZAK, COLLEEN
KOENIG, and JAN TROMBLEY,

Defendants.

ORDER GRANTING CERTIFICATE OF GOOD FAITH APPEAL

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on October 21, 2009.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

On September 2, 2009, this Court entered an opinion and order dismissing with prejudice Plaintiff's *pro se* civil rights complaint against Defendants pursuant to 42 U.S.C. § 1983. Currently before the Court is Plaintiff's "Memorandum of Law in Support of Notice of Appeal" in which Plaintiff seeks "a Certificate of Appealability." Because Plaintiff is appealing a dismissal of an action brought pursuant to § 1983, it is not necessary for him to obtain a Certificate of Appealability. *Johnson v. CCA-Northeast Ohio Corr. Ctr.*, 21 Fed. App'x 330, 332 (6th Cir. 2001). However, Section 1915(a)(3) provides that "[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in

writing that it is not taken in good faith.”¹ 28 U.S.C. § 1915(a)(3).

In the context of § 1915, “good faith” simply means “not frivolous.” *Coppedge v. United States*, 369 U.S. 438, 445, 92 S. Ct. 917, 921 (1962). An appeal is taken in good faith if it presents a legal issue that is arguable on its merits. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). In its opinion and order of September 2, 2009, this Court dismissed Plaintiff’s complaint because Plaintiff failed to state a claim upon which relief may be granted. Although continuing to believe that Plaintiff’s complaint fails to state a cause of action and therefore is subject to dismissal, this Court does not believe that Plaintiff should be denied his opportunity to seek appellate review. Therefore, this Court believes that Plaintiff’s appeal is “taken in good faith.” 28 U.S.C. § 1915(a)(3).

Accordingly,

IT IS ORDERED that Plaintiff is **GRANTED** a certificate of good faith appeal pursuant to 28 U.S.C. § 1915(a)(3).

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copy to:
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¹Plaintiff was granted leave to proceed without prepayment of fees when he filed this action and, as of this date, he has not paid the filing fee for his appeal.